

# INQUIRY INTO PEDIATRIC FORENSIC PATHOLOGY IN ONTARIO

## RULES OF PROCEDURE

### General

1. This inquiry (the “Commission” or “Inquiry”) will be held in accordance with the *Public Inquiries Act*, R.S.O., c. P.41 (the “Act”) and pursuant to Order in Council 826/2007 (the “Terms of Reference”).
2. Subject to the Act and the Terms of Reference, the conduct of and procedure to be followed at the Inquiry is under the control and discretion of The Honourable Stephen Goudge (the “Commissioner”).
3. The Commissioner may amend these Rules of Procedure (“Rules”) or dispense with compliance of these Rules, as he deems necessary to ensure that the Inquiry is thorough, fair and timely.
4. All parties, witnesses and their counsel will be deemed to undertake to adhere to these Rules, and may raise any issue of non-compliance with the Commissioner.
5. The Commissioner may deal with any non-compliance with these Rules as may be appropriate, including by revoking the standing of a party or imposing restrictions on a party or person in attendance at a hearing.
6. In these Rules, “persons” refers to individuals, groups, governments, agencies, institutions or any other entity.
7. In these Rules, the term “documents” is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, microfiche and any data and information recorded or stored by means of any device.

### Investigation

8. The Inquiry will commence with an investigation by Commission counsel. The goal of the investigation, in part, will be to identify the core or background facts that will form the basis of Overview Reports, as described below, and to identify representative witnesses.
9. The investigation will consist primarily of document review, consultation with interested persons, and witness interviews by Commission counsel.

## **Document Production**

10. Copies of all relevant documents are to be produced to the Commission by any party with standing at the earliest opportunity. Production to the Commission will not constitute a waiver of any claim to privilege that a party may wish to assert. Parties are, however, requested to identify to the Commission, within a reasonable time period, any documents over which they intend to assert a claim of privilege.
11. Where a party objects to the production of any document on the grounds of privilege, a true copy of the document will be produced in an unedited form to Commission counsel who will review and determine the validity of the privilege claim. The party and/or the party's counsel may be present during the review process. In the event the party claiming privilege disagrees with Commission counsel's determination, the Commissioner, on application, may either inspect the impugned document(s) and make a ruling or may direct the issue to be resolved by the Associate Chief Justice of Ontario or his designate.
12. Originals of relevant documents are to be provided to Commission counsel only upon request and where doing so would not interfere with any potential or ongoing investigation or legal proceeding. The parties will otherwise preserve originals of relevant documents until such time as the Commissioner has fulfilled his mandate or has ordered otherwise.
13. Counsel to the parties and witnesses will be provided with documents and information by Commission counsel only upon executing a written undertaking that all such documents and information will be used solely for the purposes of the Inquiry. No such information or documents may be made public until entered as evidence at the Inquiry.
14. Counsel are entitled to provide such documents or information to their respective clients only on terms consistent with the undertakings given, and upon the clients entering into written undertakings to the same effect.
15. These undertakings will be of no force or effect once the documents or information are entered into the public record.
16. The Commission may require that the documents provided, and all copies made, be returned to the Commission if not tendered in evidence.

## **Overview Reports**

17. In accordance with section 7 of the Terms of Reference, Commission counsel will prepare Overview Reports, which may contain core or background facts, together with their source(s).
18. Commission counsel will provide an opportunity to the parties, in advance of the filing of Overview Reports as evidence, to comment on the accuracy of the Overview Reports, and Commission counsel may modify the Overview Reports in response. Parties may also, pursuant to Rule 26 below, propose witnesses to be called to support, challenge, comment upon or supplement the Overview Reports in ways that are likely to

significantly contribute to an understanding of the systemic issues relevant to this Inquiry.

19. The Overview Reports may be used to assist in identifying the systemic issues that are relevant to this Inquiry, to make findings of fact and to enable recommendations to be made, but Overview Reports will not be used in a manner precluded by sections 5 and 6 of the Terms of Reference.

### **Oral Hearings**

20. The Commissioner will conduct hearings as set out in these Rules.
21. The Commissioner will set the dates, hours and place of the hearings.
22. The Commissioner may receive any evidence or information that he considers helpful in fulfilling his mandate whether or not such evidence or information might otherwise be admissible in a court of law. The strict rules of evidence will not apply to determine the admissibility at the Inquiry. However, pursuant to section 11 of the Act, nothing is admissible in evidence at the Inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence.
23. The Commission will rely, wherever possible, on the Overview Reports and may consider such reports in lieu of calling witnesses.
24. The Commission will rely, wherever possible, on representative witnesses on behalf of institutions.
25. Commission counsel may call witnesses or experts, who may, amongst other things, support, challenge, comment upon or supplement the Overview Reports.
26. Parties may propose witnesses to be called as part of the Inquiry. Parties will provide to Commission counsel the names and addresses of all witnesses they believe ought to be heard, and will provide Commission counsel, where applicable, with copies of all relevant documents, including statements of anticipated evidence from witnesses they propose, at the earliest opportunity. In particular, parties may propose witnesses who are likely to contribute to an understanding of the systemic issues relevant to this Inquiry and whose evidence is likely to assist the Commissioner in making recommendations.
27. Commission counsel will have discretion to refuse to call or present evidence proposed by a party. A party may, however, apply to the Commissioner for leave to call a witness whom the party believes has evidence relevant to the Commission's mandate. If the Commissioner is satisfied that the evidence of the witness is required, Commission counsel will call the witness, subject to Rule 33 below.
28. In the normal course, individual witnesses will give their evidence at the hearing under oath or affirmation. Further to section 10 of the Act, however, the Commissioner may admit evidence not given under oath or affirmation.

29. Witnesses who are not represented by counsel for parties with standing are entitled to have their own counsel present while they testify. Counsel for the witness will be permitted to make appropriate objections during the witness's testimony.
30. Witnesses may be called to testify more than once.
31. Subject to the Act, the Commissioner may impose measures to address issues of confidentiality that may arise at the Inquiry.

### **Rules of Examination**

32. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Except as otherwise directed by the Commissioner, Commission counsel is entitled to adduce evidence by way of both leading and non-leading questions.
33. Parties will have an opportunity to cross-examine the witness, to the extent of their interest. The Commissioner will determine the order of cross-examinations.
34. Counsel for a party may apply to the Commissioner to examine a particular witness in chief. If counsel is granted the right to do so, examination will be confined to the normal rules governing the examination of one's own witness.
35. The Commissioner may direct any counsel whose client shares a commonality of interest with the witness only to adduce evidence through non-leading questions.
36. Counsel for a witness, regardless of whether or not counsel is also representing a party, will examine after the other parties have concluded their cross-examinations, unless he or she has adduced the evidence of the witness in chief, in which case there will be a right by that counsel to re-examine the witness. In the event, however, that counsel for the witness intends to adduce evidence in chief not adduced by Commission counsel, counsel for the witness will examine the witness immediately following Commission counsel, and then will have a right to re-examine the witness following the cross-examinations by the other parties.
37. Commission counsel has the right to re-examine any witness at the conclusion of his or her evidence.
38. The Commissioner may set time allocations for the conduct of examinations and cross-examinations.

### **Use of Documents at Hearing**

39. In advance of a witness's testimony, Commission counsel will provide the parties with reasonable notice of a list of the documents associated with the witness's anticipated evidence in chief.
40. In advance of a witness's testimony, counsel, other than Commission counsel, intending to lead a witness's evidence in chief will provide the parties with reasonable notice of the

subject matter of the witness's anticipated evidence in chief and a list of the documents associated with that evidence.

41. Neither parties nor Commission counsel will be entitled to cross-examine a witness on any anticipated evidence statement or witness interview summary that may be provided, except with leave of the Commissioner.
42. Parties who intend to cross-examine a witness will provide reasonable notice of any documents to which they intend to refer during their cross-examination, other than those documents for which notice has previously been provided pursuant to Rules 39 or 40.
43. In the event a party intends to refer to a document during an examination, and the document has not been previously disclosed in the Commission's database, the party must provide Commission counsel and counsel for the witness, if any, with a hard copy and an electronic copy of the document, and must also provide the parties with an electronic copy of the document, at the earliest opportunity.
44. For the purpose of these Rules, the Commissioner will have discretion to determine what constitutes "reasonable notice" or "at the earliest opportunity" in all of the circumstances.
45. The Commissioner may grant Commission counsel or counsel for a party or witness leave to introduce a document to a witness at any point during the hearing upon such terms as are just and fair.

#### **Expert Panels / Research and Policy Papers**

46. Due to the systemic nature of the Inquiry, the Commission may utilize a range of research and policy development processes, including:
  - (a) research and policy papers (the "Research and Policy Papers") from recognized experts on a broad range of relevant topics. The structure and format of the Research and Policy Papers may vary but will generally include a description of current practices, historical developments, an analysis of relevant issues, and potential options (if applicable). Research and Policy Papers will not necessarily represent the views of the Commissioner or Commission counsel but will be designed to inform the Commissioner's deliberations on systemic issues including comparative experience with pediatric forensic pathology. Research and Policy Papers will be posted on the Commission's website;
  - (b) written and/or oral submissions that may be sought from parties and the public about matters relevant to the Terms of Reference, including the Research and Policy Papers;
  - (c) meetings or symposia (the format of which may vary) that may be convened to discuss issues raised by the Inquiry at which parties and members of the public may be invited to participate; and

- (d) evidence that may be received at any stage of the Inquiry from one or more panels of expert witnesses. The Commissioner may modify these Rules as may be appropriate for the disclosure of documents and the questioning of expert panellists by the parties.